



Paper 15

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OFFICE OF PETITIONS

In re application of

Kurganov.

Application No. 09/777,406

Filed: 6 February, 2001

Attorney Docket No.: 47242-00028

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ON PETITION

This is a decision on the petition filed (with fee authorization) on 29 January, 2002 (however, not received into the Office of Petitions until this writing), and considered under the provisions of 37 C.F.R. §1.10 and §1.53 (e)¹ to accord a filing date of 5 February, 2001, to the instant application.

The Office regrets the delay in addressing this matter.

The petition under 37 C.F.R. §1.10 is **DISMISSED**; and the petition under 37 C.F.R. §1.53 (e) is **DISMISSED**.²

The record indicates that:

- the instant application was filed on 6 February, 2001, via US Postal Service (USPS) Express Mail service (Label No. EK 506 616 987 US);

¹ The regulation at 37 C.F.R. §1.53(e) provide:

§ 1.53 Application number, filing date, and completion of application.

(e) *Failure to meet filing date requirements.*

(1) If an application deposited under paragraph (b), (c), or (d) of this section does not meet the requirements of such paragraph to be entitled to a filing date, applicant will be so notified, if a correspondence address has been provided, and given a time period within which to correct the filing error.

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(h). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

(3) If an applicant is notified of a filing error pursuant to paragraph (e)(1) of this section, but fails to correct the filing error within the given time period or otherwise timely (§ 1.181(f)) take action pursuant to this paragraph, proceedings in the application will be considered terminated. Where proceedings in an application are terminated pursuant to this paragraph, the application may be disposed of, and any filing fees, less the handling fee set forth in § 1.21(n), will be refunded.

² Pursuant to Petitioner's authorization, Deposit Account 10-0447 (47242-00028) is charged the \$130.00 petition fee.

- upon the issuance of a filing receipt setting forth a 6 February, 2001, filing date, on 15 May and again on 9 October, 2001, Petitioner sought correction of the filing date from 6 February to 5 February, 2001, which request was dismissed on 7 November, 2001;
- on 29 January, 2002 (over a 7 January, 2002, certificate of mailing) Petitioner renewed the request to be accorded a 5 February, 2001, filing date;
- Petitioner does not have or otherwise has not submitted a USPS Express Mail receipt for Label No. EK 506 616 987 US;
- the database printout from the USPS supplied by Petitioner evidences that the package bearing Label No. EK 506 616 987 US was accepted by the USPS in Chicago, IL, on 6 February, 2001, and delivered to the Office on 7 February, 2001, where it was given a filing date of 6 February, 2001, consistent with 37 C.F.R. §1.10;³

Petitioner asserts that:

- its office records indicate that the materials were printed out or otherwise prepared for submission on 5 February, 2001; and
- other concurrently submitted materials were accorded a 5 February, 2001, filing date.

Notably, while the Office does not doubt that the materials may have been prepared for

³ The regulations at 37 C.F.R. §1.10 provide in pertinent part:

§ 1.10 Filing of papers and fees by "Express Mail."

(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

[48 Fed. Reg. 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 Fed. Reg. 4285, Jan. 31, 1983, paras. (a) & (c), 49 Fed. Reg. 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a)-(c) revised and paras. (d) - (f) added, 61 Fed. Reg. 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

submission on 5 February, 2001, Petitioner's only independent documentary evidence--i.e., the USPS database printout--clearly disputes Petitioner's assertion of a 5 February, 2001, date for acceptance by the USPS.

Moreover, unlike the instant application, Petitioner's other materials that have been accorded a 5 February, 2001, filing date appear to have had independent documentary evidence supporting such results.

Contrary to Petitioner's assertion, Petitioner's showing to date does not confirm that the instant application should be accorded a filing date of 5 February, 2001.

Accordingly, the Office cannot grant a 5 February, 2001, filing date for the instant application, and the petition under 37 C.F.R. §1.10 must be and hereby is **dismissed**; and the petition under 37 C.F.R. §1.53 (e) must be and hereby is **dismissed**.

The application is being returned to Technology Center 2600 with the presently accorded filing date of 6 February, 2001, for examination in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-9199.



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